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Attorneys for Reno-Sparks Indian Colony and Atsa koodakuh wyh Nuwu

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

|                                    |   |                                 |
|------------------------------------|---|---------------------------------|
| WESTERN WATERSHEDS PROJECT,        | ) | Case No. 3:21-cv-103-MMD-CLB    |
| <i>et al.</i> ,                    | ) |                                 |
| Plaintiffs,                        | ) | <b>DECLARATION OF MICHON R.</b> |
|                                    | ) | <b>EBEN</b>                     |
| and                                | ) |                                 |
|                                    | ) |                                 |
| RENO-SPARKS INDIAN COLONY and ATSA | ) |                                 |
| KOODAKUH WYH NUWU/ PEOPLE OF RED   | ) |                                 |
| MOUNTAIN                           | ) |                                 |
|                                    | ) |                                 |
| Plaintiff-Intervenor,              | ) |                                 |
| v.                                 | ) |                                 |
|                                    | ) |                                 |
| UNITED STATES DEPARTMENT OF THE    | ) |                                 |
| INTERIOR, <i>et al.</i> ,          | ) |                                 |
|                                    | ) |                                 |
| Defendants                         | ) |                                 |
|                                    | ) |                                 |
| and                                | ) |                                 |
|                                    | ) |                                 |
| LITHIUM NEVADA CORP.               | ) |                                 |
|                                    | ) |                                 |
| Defendant-Intervenor               | ) |                                 |

1 1. I, Michon R. Eben, hereby declare as follows under penalty of perjury:

2 2. I am an enrolled Paiute/Shoshone from the Reno-Sparks Indian Colony  
3 ("RSIC").

4 3. I am the Cultural Resource Manager for the RSIC. In 2011, I became  
5 the Tribal Historic Preservation Officer (THPO) for the RSIC. I have been  
6 employed as the RSIC's Cultural Resource Program Manager and THPO for  
7 over 16 years. Before I became the Cultural Resource Manager/THPO I was  
8 appointed to the Tri Basin Cultural Committee (TBCC), an advisory position to  
9 the RSIC Tribal Council. At the time of the establishment of the TBCC, there was  
10 no Cultural Resource Program. I have extensive experience participating with  
11 federal agencies in the National Historic Preservation Act's ("NHPA"), section  
12 106 consultation process on behalf of the RSIC.

13 4. Today, the RSIC Cultural Resource Program/THPO' mission is to  
14 perpetuate the traditional RSIC culture through preservation, protection and  
15 management of Native American Cultural Resources and Ancestral Remains  
16 throughout Washoe County, Nevada and other areas of cultural interests and  
17 ancestral homelands to the RSIC's members, descendants and residents; to  
18 operate the Tribal Historic Preservation Office (THPO); to educate and inform the  
19 Tribal Council, community, federal, state, local agencies, museums and other  
20 entities in relation to NAGPRA, ARPA, NEPA, AIRFA, NHPA, Nevada State  
21 Burial Laws and other important guidelines, policies and executive orders  
22 pertaining to cultural resources surveys, petroglyphs, ancestral artifacts, sacred

1 sites; and to provide the RSIC with relevant expertise. Today, the Tri-Basin  
2 Cultural Committee (TBCC) is an Advisory Committee to the Cultural Resource  
3 Program and THPO.

4 5. The RSIC is an active regional leader in protecting Native American  
5 culture. In 2017, the RSIC took the lead in amending the Nevada Revised  
6 Statutes 381 (State Museums) and 383 (Historic Preservation and Archeology),  
7 as Senate Bill 244 to strengthen Nevada's Native American representation,  
8 consultation, disposition and repatriation of our ancestral human remains,  
9 funerary objects and cultural items on state and private lands. This past 2021  
10 Nevada State Legislation session, the RSIC further revised provisions governing  
11 Native American ancestral sites through Assembly Bill 103. Both SB 244 and AB  
12 103 were passed and signed into law by both Governor Sandavol and Governor  
13 Sisolak.

14 6. The Reno-Sparks Indian Colony ("RSIC") is a federally-recognized  
15 Tribe located in Reno and Sparks, NV. RSIC consists of 1,157 members and the  
16 RSIC represents its members and descendants from the Paiute, Shoshone, and  
17 Washoe Nations. RSIC has residents, members, and employees who possess  
18 direct cultural connections to Peehee mu'huh, who practice ceremony in Peehee  
19 mu'huh, who hunt and gather in Peehee mu'huh, and who plan on doing so in the  
20 future. RSIC attaches cultural and religious significance to Peehee mu'huh.

21 7. The federal Bureau of Land Management ("BLM") did not provide the

1 RSIC and other Indian tribes who attach cultural and religious significance to  
2 Peehee mu'huh a reasonable opportunity to identify concerns about historic  
3 properties in Peehee mu'huh, advise on the identification and evaluation of  
4 historic properties in Peehee mu'huh, including those of traditional religious and  
5 cultural importance, articulate views on the Thacker Pass Lithium Mine Project's  
6 ("the Project") effects on such properties, and participate in the resolution of  
7 adverse effects as required by the National Historic Preservation Act (NHPA)  
8 before the Thacker Pass Record of Decision ("ROD") and Plan of Operations  
9 ("POO") was issued. In fact, the BLM did not even contact the RSIC before  
10 issuing the ROD and POO.

11 8. The BLM did not make a reasonable or good faith effort to identify  
12 Indian tribes that should have been consulted in the NHPA Section 106 process.

13 9. RSIC did not learn about the Thacker Pass Lithium Mine Project until  
14 April, 2021, over two months after the BLM issued the ROD and POO for the  
15 Project. RSIC learned about the project when Myron Smart, a Fort McDermitt  
16 Paiute and Shoshone traditional spiritual leader and member of Atsa koodakuh  
17 wyh Nuwu/People of Red Mountain, approached me for help in understanding  
18 what rights Native Americans possess in connection to historic and traditional  
19 cultural properties.

20 10. On May 27, 2021, RSIC learned about Lithium Nevada Corp.'s  
21 intentions to begin ground disturbance as soon as June 23, 2021 pursuant to a  
22 newly approved Historic Properties Treatment Plan (HPTP) that neither the

1 Tribes or the general public ever had a chance to review or provide comments to.  
2 This is a document that details activities that will adversely affect Paiute and  
3 Shoshone culture, traditions and spirituality forever.

4 11. On June 3, 2021, on behalf of the RSIC, I delivered a letter to Ms.  
5 Ester McCullough, BLM Winnemucca District Manager, and Mr. Ken Loda, BLM  
6 Winnemucca Project Manager for the Thacker Pass Lithium Mine Project. I  
7 copied Bryan Hockett, BLM Nevada State Archaeologist and Shannon Deep,  
8 BLM Winnemucca Archaeologist.

9 12. In this June 3 letter, I asked that the BLM “halt any plans for  
10 mechanical trenching operations and any other construction activities as part of  
11 [the Project] until meaningful government-to-government consultation with all of  
12 the tribes that are connected to Thacker Pass has concluded.”

13 13. I also explained that, along with the RSIC, the following tribes attach  
14 religious and cultural significance to Peehee mu'huh and should have been  
15 consulted about the Project: Battle Mountain Band Colony of the Te-Moak Tribe  
16 of Western Shoshone, Burns Paiute Tribe of Oregon, Cedarville Rancheria, Duck  
17 Valley Shoshone Paiute-Tribe, Fallon Paiute-Shoshone Tribe, Fort Bidwell Indian  
18 Community, Fort McDermitt Paiute and Shoshone Tribe, Lovelock Paiute Tribe,  
19 Pyramid Lake Paiute Tribe, Summit Lake Paiute Tribe, and Winnemucca Indian  
20 Colony.

21 14. I told the BLM that the “RSIC considers this entire area a Native

1 American Historic District, as well as a Traditional Cultural Property and must be  
2 treated as such, which demands NOT removing our ancestral remains or their  
3 significant cultural items!”

4 15. I requested the final Cultural Resource Inventory of Thacker Pass  
5 (authored by Far Western Anthropological Research Firm), Historic Properties  
6 Treatment Plan and the Unanticipated Discovery Plan.

7 16. I reminded the BLM that “just because regional tribes have been  
8 isolated and forced onto reservations relatively far away from Thacker Pass does  
9 not mean these regional tribes do not possess cultural connections to the Pass.”

10 17. I notified the BLM that the “episodes of consultation” listed in the  
11 Final Environmental Impact Statement at Appendix G.1.17.1 were not meaningful  
12 consultation.

13 18. Finally, I asserted that “the Project’s Record of Decision and Plan of  
14 Operations must be rescinded and you must stop any plans to disturb Native  
15 American cultural resources or historic properties in Thacker Pass.”

16 19. On July 12, 2021, RSIC received a letter from Kathleen Rehberg,  
17 Field Manager, BLM Humboldt River Field Office denying RSIC’s request for  
18 government-to-government consultation under the NHPA, section 106. Rehberg  
19 stated that the “consultation period for the public and Native American tribes on  
20 potential effects and resolution of those effects on historic properties from the  
21 Thacker Pass lithium project opened in January 2020 and closed November 5,  
22 2020.” Rehberg also confirmed that only the “Fort McDermitt Paiute Shoshone

1 tribe, the Summit Lake Paiute tribe, and the Winnemucca Indian Colony were all  
2 invited to consult on both the project and its impacts.”

3 20. If RSIC is provided a reasonable opportunity to consult with the BLM  
4 about effects to Peehee mu’huh’s historic properties, RSIC will advise BLM about  
5 the massacre that occurred in Peehee mu’huh; about the way Native Americans  
6 hid from soldiers in Peehee mu’huh; and about how our ancestors have traveled  
7 through, created arrowheads and other tools in, camped in, hunted and gathered  
8 in, buried the dead in, and performed ceremony at Peehee mu’huh for millennia.  
9 RSIC will encourage the BLM to allocate Peehee mu’huh to the “Conservation for  
10 Future Use” and “Traditional Use” categories and to provide Peehee mu’huh with  
11 long-term preservation as described in BLM Manual 8110.

12 21. If RSIC is provided a reasonable opportunity to advise on the  
13 identification and evaluation of historic properties in Peehee mu’huh and  
14 articulate RSIC’s views on effects to these properties, RSIC will object to the  
15 characterization of Peehee mu’huh’s cultural resource sites as “prehistoric.” I  
16 have worked with Far Western Anthropological Resource Group, Inc. (“Far  
17 Western”), the archaeological contractor that Lithium Nevada plans on hiring to  
18 desecrate Peehee mu’huh. Far Western archaeologists subscribe to a theory  
19 known as the “Numic expansion” which posits that our ancestors only arrived in  
20 the region between 500-1000 years ago. Our oral histories and traditional  
21 teachings hold that our people were placed here with the stones. In other words,  
22 our ancestors have lived in the region from time immemorial. We consider the

1 Numic expansion theory a racist narrative that is used to justify keeping our  
2 ancestors' artifacts from us. Subscribers to the Numic expansion theory argue  
3 that artifacts extracted from project areas do not need to be returned to Numic-  
4 speaking peoples because the artifacts were not created by the ancestors of  
5 Numic-speaking peoples.

6 22. If RSIC is provided a reasonable opportunity to participate in the  
7 resolution of adverse effects to historic properties in Peehee mu'huh, RSIC will  
8 help the BLM understand that gouging seven, 40-meter-long, several-meter-deep  
9 trenches and hand-digging as many as 525 holes into land hallowed by the  
10 massacre of our ancestors severely disrespects our culture and traditions,  
11 causes us extreme emotional and spiritual distress, and is a desecration of the  
12 worst kind.

13 23. If BLM and Lithium Nevada still insist on disrespecting our traditional  
14 ways, distressing us emotionally and spiritually, and desecrating land we  
15 consider sacred, RSIC will advise the BLM on how to perform this desecration in  
16 the most sensitive manner possible.

17 24. Because the desecration of Peehee mu'huh is so imminent, the  
18 RSIC is forced to seek relief, including preliminary relief, in order to protect its  
19 interests in protecting historic properties the RSIC attaches religious and cultural  
20 significance to. These properties would be irreparably harmed by the BLM's  
21 current Thacker Pass Historic Properties Treatment Plan. In addition, this type of



1 desecration will have physiological, psychological and tangible effects on the  
2 Paiute and Shoshone people's cultural connection to Peehee mu'huh.

3 25. I swear under penalty of perjury that the foregoing is true and correct  
4 to the best of my knowledge.

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7 Michon R. Eben

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9 Michon R. Eben  
10 Reno-Sparks Indian Colony  
11 Cultural Resource Manager & Tribal Historic Preservation Officer  
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